

Australian charities face scrutiny in new Inquiry

6 October 2016

Some major Australian charities will be scrutinised by the Fair Work Ombudsman as part of a new Inquiry in response to concerns that young charity collectors are being exploited.

The Fair Work Ombudsman is concerned that due to lax governance arrangements, charities are unaware that workplace laws are being flouted by some of the specialist companies they are outsourcing their fundraising activities to.

The Inquiry will scrutinise charities' labour procurement and supply chain practices, with a particular focus on whether their governance arrangements are adequate.

The Inquiry will examine seven large charities with an annual income of more than \$1 million, five medium charities with an annual income of more than \$250,000 and three small charities with annual incomes below \$250,000.

The charities to be scrutinised will be selected at random.

The fundraising companies contracted by the selected charities will also be scrutinised to ensure their business models are compliant and they are paying workers' minimum lawful entitlements.

Acting Fair Work Ombudsman Michael Campbell says there are more than 54,000 registered charities in Australia and it is common for them to outsource fundraising activities to sales-and-marketing companies and other specialist fundraising companies.

The companies then engage workers to collect funds for the charities via methods including seeking donations on the street and at shopping centres, tele-fundraising and door-to-door collections.

"We have been monitoring the practices of operators in the charity sector for some time now and the practices of some specialist fundraising companies concerns us," Mr Campbell said.

"Many do the right thing by workers but our intelligence suggests a minority are not respecting workers' rights.

"Young and overseas workers are often the ones who are getting short-changed and because they are generally not fully aware of their workplace rights, we certainly don't think they are reporting all instances of exploitation to us.

"The Inquiry will help us to understand the nature and prevalence of this issue."

Mr Campbell says a crucial part of weeding out rogue operators in the sector is creating more awareness among charities that if they fail to exercise due diligence when outsourcing their fundraising activities, workers in their supply chains can be exploited.

"Many charities have no idea whether the workers who are wearing hats and T-shirts bearing their logos and collecting donations on their behalf are being paid correctly or treated fairly," he said.

"There have been a number of instances where charities have been horrified to learn about the exploitation of workers occurring in their own supply chains."

The Inquiry comes as a Fair Work Ombudsman investigation results in Sydney-based fundraising company Mondial Fundraising Communications Pty Ltd agreeing to back-pay \$770,000 to 824 current and former employees it has underpaid since 2010.

Mondial holds contracts to fundraise for charities including The Wilderness Society, OXFAM Australia, UNICEF, RSPCA, Starlight Children's Foundation of Australia and the Cancer Council.

Mondial unintentionally underpaid the minimum wages and penalty rates their call centre workers were entitled to under the Contract Call Centre Award because it incorrectly paid them according to the national minimum wage.

The company discovered its mistake after it engaged an employment law specialist to conduct an audit in December, 2015.

Mondial has already back-paid workers more than \$300,000 and has agreed to rectify all underpayments by the end of 2017.

The company has also agreed to take a range of actions aimed at ensuring future compliance under an Enforceable Undertaking with the Fair Work Ombudsman, including commissioning further audits of its compliance in 2017 and 2018.

The company will also apologise to the underpaid workers and donate \$10,000 to the Marrickville Legal Centre.

Most of Mondial's staff are adult Australian workers, with a small proportion being 417 working holiday visa-holders from Canada, the UK and Ireland.

Mr Campbell says a common non-compliance issue that will be examined by the Inquiry is charity collectors being classified and treated as independent contractors, when their correct classification was as employees.

Misclassification often results in employees being provided with a low contract rate of pay, instead of the minimum wages and National Employment Standards entitlements they are entitled to.

In some cases the misclassification is done deliberately or recklessly, and therefore amounts to sham contracting.

Other non-compliance issues the Fair Work Ombudsman has encountered include fundraising companies unlawfully paying charity collectors on a commission-only basis and using unpaid internships and even high school work experience students in their business models.

Mr Campbell says operators in the fundraising sector need to be aware that just because they instruct a charity collector to obtain an Australian Business Number (ABN), it doesn't necessarily mean the worker can lawfully be treated as an independent contractor.

"When our inspectors see a situation where a worker's classification doesn't look right, they will conduct their own assessment of factors such as the level of control and direction the operator has over the worker and whether the worker is legitimately running their own business," he said.

The Fair Work Ombudsman is currently taking legal action for the second time against fundraising company Australian Sales and Promotions Pty Ltd, which has held contracts with charity and not-for-profit organisations to conduct fundraising activities on their behalf.

The latest action alleges the company breached sham contracting laws by requiring a 26-year-old British backpacker in Sydney to obtain an ABN and telling him that he was a contractor operating his own business, rather than an employee.

The backpacker was allegedly underpaid almost \$8000.

The action comes after the company was penalised more than \$23,100 in Court in 2013 for underpaying five sales workers – including 417 working holiday visa-holders from the US and Taiwan – more than \$9000.

Mr Campbell says the Inquiry findings will enable the Fair Work Ombudsman to make informed decisions about how to best develop a sustainable culture of compliance in the charity sector.

"The intelligence we gain through the Inquiry will help us tailor compliance and education activities for the charity sector that help to prevent exploitation and increase awareness of rights and obligations among workers, charities and fundraising companies," he said.

"The desired end result is that all parties in the supply chain recognise and accept their social, moral and corporate responsibility to ensure compliance with workplace laws."

Mr Campbell says the Fair Work Ombudsman has been warning companies for a number of years about the dangers of outsourcing low-skilled work to the lowest cost provider without considering whether the cost is attributable to underpayment of workers' minimum entitlements.

"The dangers faced by companies outsourcing work to low-cost security and cleaning contractors also apply with equal force to charities and not-for-profit organisations outsourcing fundraising work," he said.

"Outsourcing can be a legitimate business decision but appropriate controls need to be put in place."

As part of the Inquiry, the Fair Work Ombudsman plans to design tailored material for the charity sector, including a checklist encouraging self-initiated compliance testing by charities, intermediaries and workers.

The Fair Work Ombudsman has and will continue to consult with key stakeholders including the Australian Charities and Not-for-profits Commission and the National Union of Workers in promoting the objectives of the Inquiry.

At the conclusion of the Inquiry, the Fair Work Ombudsman will publish a public Report with recommendations for improving compliance in the charity sector.

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- [Mondial Fundraising Communications Pty Ltd Enforceable Undertaking - Redacted \(DOCX 150.2KB\)](http://www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-mondial-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-mondial-redacted.docx.aspx) (PDF 1.4MB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-mondial-redacted.pdf.aspx)

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